IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1536 OF 2004

The State of Maharashtra ..Appellant

V/s.

Haroon Rashid Yamin Lohar & Ors. ..Respondents

Mr.V.A.Thorat, Advocate General alongwith Mrs.U.V.Kejriwal Additional Public Prosecutor for the appellant/State.

Mr.P.P.Hudlikar i/by Shahid Azmi for Respondents.

Coram : R.M.LODHA & R.S.MOHITE,JJ

Date : 08.02.2005.

PC

. Heard the learned Advocate General for the Appellant/State and the learned Counsel for the Respondents.

2. The respondents are accused no.7 and accused no.8 respectively in Special Case No.1 of 2003 being tried under POTA 2002 by the learned Special Judge. Pending bail application no.19/2004, the Special Court ordered release of the present respondents on interim bail on the conditions stated in the order dated 16.12.2004. Aggrieved thereby, the State has filed this appeal under Section 34 of POTA-2002.

3. The learned Special Judge granted interim bail to them inter alia on the ground that they are

entitled to claim parity alongwith accused no.1. By a separate order passed by us today in Criminal Appeal No.1538/2004 which has been decided alongwith Criminal Appeal No.1115/2004, we have set aside the interim bail granted to accused no.1. As a result thereof the order of interim bail in favour of the present respondents cannot be sustained.

4. During the course of hearing the learned Counsel for respondents expressed that Bail application No.19/2004 may be directed to be heard by the learned Special Judge after the prosecution examines the Complainant.

5. Though we do not suggest the order in which the prosecution witnesses are to be examined but looking to the facts and circumstances of the case and the observations that have already been made by us in our order passed today in Criminal Appeal No.1538/2004 and Criminal Appeal No.1115/2004, we are of the view that the prosecution needs to expedite the examination of the Complainant.

6. We accordingly dispose of the Criminal Appeal by following order :-

O R D E R

(i) The order dated 16.12.2004 granting interim bail

to the present respondents (accused no.7 and accused no.8) is set aside.

(ii) The prosecution is expected to expeditiously examine the Complainant.

(iii) The learned Special Judge shall hear the Bail application No.19/2004 after the Complainant is examined uninfluenced by earlier order and pass an appropriate order thereon granting or refusing the bail to the accused nos.7 & 8.

(iv) The accused nos.7 & 8 shall be at liberty to make fresh application or amend the existing Bail application, as may be advised.

(v) Appeal is disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)